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No. 91-803

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

JOHNNY MAC BROWN,

Petitioner,

v.

AMERICAN HONDA MOTOR CO., INC.
and JERRY FELTY,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the District Court and Court of Appeals properly apply well-established summary judgment principles in granting and affirming summary judgment against Petitioner based on the determination that the evidence permitted no reasonable inference that Respondents intentionally discriminated against Petitioner on the basis of his race in refusing to award him a Honda dealership?

PARTIES TO THE PROCEEDING

The caption contains the names of all current parties to this proceeding. Philip Hughes and Ashley Hughes formally intervened in the District Court; however, they are no longer parties to this action.

Pursuant to Supreme Court Rule 29.1, the following is a list of all parent companies and subsidiaries (except wholly-owned subsidiaries) of Respondent American Honda Motor Co., Inc.:

1. Honda Motor Co., Ltd.
2. Honda of America Mfg., Inc.
3. KTH Parts Industries, Inc.
4. Honda International Trading Corp.
5. Bellemar Parts Industries, Inc.

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Respondents American Honda Motor Co., Inc. ("American Honda") and Jerry Felty hereby submit this Brief in Opposition to Petitioner Johnny Mac Brown's Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit and, for the reasons set forth herein, respectfully pray that this Court deny the Petition for Writ of Certiorari.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at 939 F.2d 946 (11th Cir. 1991).

The decision of the United States District Court for the Northern District of Georgia is unreported. Copies of both decisions are attached as Appendix A and B, respectively, to the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

I. INTRODUCTION

Petitioner Johnny Mac Brown ("Petitioner" or "Brown") contends that this case involves an unresolved and difficult issue of the proper application of summary judgment principles to a civil rights case requiring proof of discriminatory intent. To the contrary, this case involves nothing more than the application of well-established rules, already fully explored and articulated by this Court, regarding both the analytical framework for examining evidence on the issue of discriminatory intent and the resolution of summary judgment motions. The Court of Appeals' affirmance of the District Court's decision is not "part of a trend toward a more liberal use of the summary judgment procedure," Petition at 3; it merely constitutes the proper use of that procedure where the evidence is not sufficient to create a genuine issue of material fact that Respondents intentionally discriminated against Petitioner on the basis of his race.

This Court has recently issued a series of comprehensive opinions on the law governing summary judgment motions. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.* 475 U.S. 574 (1986).

Similarly, the three-step framework for analyzing evidence on the issue of discriminatory intent under 42 U.S.C. § 1981 (1988) is also well-established. *See Texas Dep't. of Community Affairs v. Burdine*, 450 U.S. 248 (1981); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Thus, this case presents no novel or complex issue warranting the issuance of a writ of certiorari.

II. STATEMENT OF FACTS

This lawsuit arises out of American Honda's selection of a candidate other than Petitioner for a new Honda automobile dealership in the Warner Robins, Georgia area. Petitioner, a black person, was one of four applicants for the prospective Warner Robins dealership. At the time of his application, Petitioner already operated a dealership in Warner Robins carrying four General Motors lines of vehicles—Oldsmobile, Cadillac, Pontiac, and GMC Trucks. (R7-38).

In response to Petitioner's previous inquiry, American Honda informed Petitioner of the Warner Robins "open point" and solicited his dealership application. (R12-6 to 13). Wes Jennings, American Honda's new district sales manager for the Warner Robins area and the employee responsible for contacting prospective local applicants, knew Petitioner was black through his previous employment with General Motors. (R12-4). Jennings also contacted two other applicants who owned existing car dealerships in the Warner Robins area, Dan Walton and Billy Butler. (R12-12 to 13; Defendants' Exhibit ("DEX") 54). Walton and Butler were white. While in Warner

Robins, Jennings met separately with Petitioner, Walton, and Butler to discuss their interest in a Honda dealership and to encourage each one to present a proposal for a new Honda dealership. (R12-9 to 13).

In addition to the three Warner Robins applicants, Philip and Ashley Hughes became aware of the Warner Robins open point through other channels. The Hughes owned and operated an existing Honda dealership in Athens, Georgia. (R8-28; R-12-83 to 85). The Hughes, however, were much more than just existing Honda dealers with whom American Honda had prior experience—they were outstanding dealers who had an exemplary track record in sales and service. (R9-120; R11-136 to 143, 147 to 148, 164; DEX 61-63, 69, 72). For example, the Hughes received the Honda Quality Dealer Award in 1977, 1979, and 1981, and ranked second in their district and fourth in their zone (out of 103 dealers) in the 1984 J.D. Power Dealer Image Survey. Thus, the Hughes were proven performers with valuable experience and skills in building and maintaining a Honda dealership.

In late September and early October of 1984, all four applicants submitted applications for the Warner Robins open point. (DEX 3, 4, 22, 31, 43). All four applicants met the minimum financial and facility requirements for a Honda dealership, including floor space, minimum floor plan financing, minimum capital investment, etc. (*Id.*). The Hughes' application stood out, however, based on their proven record of success as a Honda dealer. Further, only the Hughes

intended to sell exclusively Honda automobiles at the Warner Robins dealership, as Petitioner, Walton, and Butler all proposed to continue selling their existing lines. (R11-94, 131; DEX 53).[1/] Petitioner attempts to make out a case for intentional discrimination by pointing to the fact that the Hughes acquired certain information from American Honda regarding minimum dealer requirements while such information was not provided to him. Petitioner ignores, however, the fact that the two white Warner Robins dealers did not have this information either. Moreover, this information related to *minimum* dealer requirements, and Petitioner's application admittedly exceeded American Honda's minimum requirements.[2/]

Respondents seriously considered each candidate's application. Jennings discussed all three Warner Robins applicants, including Petitioner, with American Honda's assistant zone manager before the assistant manager and

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1/ Although Plaintiff asserts that there is no evidence that the Hughes made any "commitment" to sell only Honda automobiles in the Warner Robins area, the undisputed fact remains that the Hughes were the only applicants who did not sell other automobile lines in that area. By contrast, American Honda knew that Petitioner and the other white applicants intended to continue operating their existing dealerships.

2/ Although Petitioner contends that he requested such information from American Honda representatives, Petition at 5, he provides no record cite supporting this contention, and Respondents are not aware of any evidence to this effect. Further, Petitioner fails to point out that American Honda responded to a request for information by his accountant and assisted him in completing one of the forms for Petitioner's application. This request was the only specific help Petitioner sought from American Honda. (R7-133 to 135).

Respondent Felty made their recommendation. (R10-182 to 184, R12-47 to 48). Regarding Petitioner, Jennings told Felty that Petitioner's facilities were cluttered and that he had many other automobile franchises. (R9-13). Felty reviewed all the applications except Butler's prior to making a decision to recommend the Hughes for the Warner Robins open point. (R10-178, R11-106, DEX 52). American Honda did not interview any of the four applicants after receiving their applications; therefore, Petitioner's allegation that American Honda deviated from alleged Company practices by not interviewing him raises no inference of intentional racial discrimination.

In recommending the Hughes for the new dealership, Felty and his assistant zone manager emphasized the Hughes' proven excellent performance as a Honda dealer, their well-established record of customer satisfaction, and Philip Hughes' activity on the Honda Dealer Council, among other things. (DEX 52, 53). In a subsequent memorandum to American Honda's national sales manager, Felty re-emphasized the importance of the Hughes' proven track record as a Honda dealer and also expressed concern that because the other three applicants carried other lines of automobiles, they might suffer reduced management effectiveness. (DEX 53). Significantly, this memorandum criticizes Petitioner and the white Warner Robins applicants on the same basis. The fact that American Honda's national sales manager never saw Petitioner's application before awarding the dealership to the Hughes is not significant, as he testified that he ordinarily only reviews the application

of the person recommended by the zone manager. (R9-171 to 173). Moreover, this fact cannot be evidence of racial discrimination against Petitioner because the national sales manager did not see the applications of either Walton or Butler prior to making his decision. (*Id.*).

For obviously reasonable and legitimate business reasons, American Honda preferred to fill its new dealerships with existing dealers who have proven records of success in selling and servicing Honda automobiles. Petitioner's attempt to show this reason was merely a pretext for discrimination because it does not appear in American Honda's manual is both unavailing and belied by undisputed evidence in the record. Contrary to Petitioner's implication, the manual was merely a guideline for zone managers to use in filling new dealerships, and it obviously did not preclude American Honda from considering other relevant business factors. (R8-145). Moreover, American Honda filled ten of the last 13 open points in Felty's zone (up to and including the Warner Robins dealership) with existing Honda dealers. (R11-97 to 100, DEX 73). American Honda's established preference for applicants with proven track records as Honda dealers is unrelated to the race of the applicants, and was applied to Petitioner and the other two unsuccessful applicants in the same manner it was applied to groups of all white applicants.[3/]

3/ Petitioner was the only black applicant for these thirteen open points. (R9-4 to 5).

Finally, Petitioner has injected misleading and irrelevant matters regarding the alleged "entirely white landscape" of American Honda.[4/] As noted by the Eleventh Circuit, under this Court's decision in *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989), Petitioner's bare statistics "without an analytical foundation, are virtually meaningless." *Brown*, 939 F.2d at 952. Moreover, while such statistics may be relevant in a disparate impact case, they are not relevant at all to the section 1981 analysis which requires proof of a specific intent to discriminate against the Plaintiff. *Id.*

III. PROCEEDINGS BELOW

Petitioner brought suit against Respondents on February 14, 1985, seeking injunctive relief and damages under 42 U.S.C. § 1981 (1988). The Honorable Horace Ward of the Northern District of Georgia presided over a six-day plenary trial in November of 1985 on the injunction and declaratory judgment issues, during which Petitioner offered all of his evidence on liability under section 1981. After considering this evidence, Judge Ward denied Petitioner's request for a permanent injunction and granted the Hughes' request as intervenors for a declaratory judgment that the Hughes, rather than Petitioner, were entitled to the Warner Robins dealership. (R4-81).

4/ Petitioner is patently incorrect when he alleges that American Honda discriminated against Gregory Baranco in his attempt to obtain a Honda dealership in another part of Georgia. The evidence is undisputed that Baranco contacted American Honda only by letter and by telephone, and never informed anyone at American Honda that he was black. (R7-201 to 204, 212).

Discovery continued on the damages issues, and on March 18, 1988, Respondents filed their Motion for Summary Judgment on all remaining claims. On April 24, 1990, Judge Ward granted this Motion and entered final judgment for Respondents. (R4-119, 120). Petitioner then appealed to the Eleventh Circuit, which affirmed Judge Ward's decision. Contrary to Petitioner's characterization, the Court of Appeals did not selectively weigh the evidence, but properly examined the record for any reasonable inference that American Honda intentionally discriminated against Petitioner because of his race. Finding no evidence that would support such an inference, the Court of Appeals properly affirmed the granting of summary judgment.

REASONS WHY THE WRIT SHOULD BE DENIED

I. THIS COURT DOES NOT NEED TO ELABORATE FURTHER ON THE PROPER STANDARDS FOR GRANTING SUMMARY JUDGMENT IN CASES INVOLVING DISCRIMINATORY INTENT

Petitioner attempts to characterize this case as raising a novel issue regarding the proper application of summary judgment principles with respect to which this Court needs to provide guidance to the lower courts. This case, however, merely involves the routine application of summary judgment principles recently clarified by this Court to the well-established framework of determining discriminatory intent in a section 1981 case. The Court of Appeals rejected the same argument thusly: "Although the plaintiff asserts that this case is important to the developing law of discrimination claims under section 1981, we believe the case involves nothing more

than the application of established law, about which the parties do not disagree, to the individual facts of this case." 939 F.2d at 948. Because this Court's opinions provide lucid and thorough guidance on the proper resolution of summary judgment motions, this Court's valuable time can be better occupied with other matters.

This Court's recent decisions in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986), plainly set forth the standard for deciding a motion for summary judgment. In *Anderson*, this Court noted that Fed. R. Civ. P. 56(c) "provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment, the requirement is that there be no *genuine* issue of *material* fact." 477 U.S. at 247-48 (emphasis in original). This Court further noted that the "materiality" and "genuineness" of a factual dispute are distinct concepts. As to materiality, factual disputes that are irrelevant or insignificant under the controlling substantive law cannot defeat summary judgment. *Id.* at 248. For a factual dispute to be genuine, the evidence must be "such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The focus of this prong of the summary judgment inquiry is whether the evidence is "significantly probative" so as to require a trial. *Id.* at 249-50.

This Court in *Anderson* further explained that the summary judgment standard "mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a), which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict." *Id.* at 250. The direct analogy between the standards for summary judgment and directed verdict belies Petitioner's contention that the *Anderson* decision created "confusion" as to the proper scope of the district court's function in deciding a motion for summary judgment. District courts apply the "reasonable jury" standard in deciding directed verdict motions in virtually every case. Therefore, they obviously can apply the same standard in deciding a motion for summary judgment. While Petitioner may complain about the application of the summary judgment standard in this case,[5/] there is nothing inconsistent or confusing in the *Anderson* decision which would require further clarification by this Court.

Contrary to Petitioner's argument, the *Anderson* opinion is neither contradictory nor confusing. *See* Petition at 19-20. In stating that "there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party," *id.* at 249, the *Anderson* court obviously meant the "reasonable jury" standard applied on directed verdict motions. Petitioner confuses the concept of the sufficiency of the evidence with the threshold inquiry of

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5/ However, as shown in Part II, *infra*, the District Court and Court of Appeals correctly applied these standards in granting summary judgment to Respondents.

whether the nonmovants' evidence is minimally sufficient that a reasonable jury could return a verdict in its favor. The Court's function is merely to make that threshold inquiry—exactly the same function a-district court regularly performs at the directed verdict stage. Petitioner's melodramatic assertion that the *Anderson* holding would entirely negate the need for juries in civil cases ignores the close relationship between the summary judgment and directed verdict standards, and substitutes rhetoric for reasoning.

The standards set by this Court in *Anderson, Celotex,* and *Matsushita* are not ambiguous or susceptible to an overly broad application. In tying the summary judgment standard to that for a directed verdict, this Court gave district courts a clear and familiar standard to apply in deciding summary judgment motions. Because this standard does not need further elaboration or clarification, Respondents respectfully submit that the Petition for Certiorari should be denied.

II. THE DISTRICT COURT CORRECTLY DETERMINED THAT PETITIONER'S EVIDENCE ALLOWED NO REASONABLE INFERENCE OF INTENTIONAL DISCRIMINATION AND THUS PROPERLY GRANTED SUMMARY JUDGMENT TO RESPONDENTS

Even viewed in the light most favorable to Petitioner, his evidence presented to the District Court raises no inference that Respondents intentionally discriminated against him on the basis of his race. The evidence reveals that throughout the application process, Respondents treated Petitioner exactly the same as Walton and Butler, the white Warner Robins

applicants. Further, Petitioner never rebutted American Honda's legitimate and nondiscriminatory reasons for choosing the Hughes, *i.e.*, that the Hughes were existing Honda dealers with an excellent performance record and that the Hughes were the only applicants who would be selling only Honda automobiles in Warner Robins. The inferences urged by Petitioner create neither a material nor a genuine issue of fact as to whether Respondents intentionally discriminated against Petitioner because of race. The lower courts therefore properly granted summary judgment to Respondents.

Petitioner failed to show the existence of a *material* issue of fact because none of his evidence supports a reasonable inference that Respondents intentionally discriminated against him because of his race. Any alleged deviations by American Honda from the manual clearly affected the white Warner Robins' applicants in the same manner as they affected Brown. *See Giles v. Ireland*, 742 F.2d 1366, 1375-76 (11th Cir. 1984) (plaintiffs could not establish discrimination claim when challenged practice affected both blacks and whites in the same manner). The vast majority of Petitioner's allegations which he contends support a reasonable inference of intentional discrimination apply with equal force to Walton and Butler, such as his allegations that American Honda failed to interview him, failed to contact any of his local references, failed to provide him with the same information provided to the Hughes, had a different manager handle his application than the one who handled the Hughes' application, and the fact that American Honda's national sales manager did not review his

application prior to issuing the letter of intent to the Hughes. This evidence plainly establishes that any alleged disparity in treatment between Petitioner and the Hughes was not the result of intentional racial discrimination by Respondents.[6/]

Moreover, Petitioner presented no evidence that American Honda's legitimate, nondiscriminatory reasons for choosing the Hughes were merely a pretext for racial discrimination. The mere fact that the manual does not expressly state a preference for existing Honda dealers does not mean that American Honda is precluded from considering such an obviously legitimate and compelling factor.[7/] American Honda had consistently applied this factor in filling 10 of the last 13 open points in Felty's zone with applicants who were existing Honda dealers. Petitioner thus has not raised any inference of intentional racial discrimination from American Honda's consistent application of this reasonable business practice.

Further, there is no support in the record in the record for Petitioner's assertion that there was "conflicting evidence" as to whether the Hughes would be selling exclusively Honda automobiles in the Warner Robins area. Their application

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6/ As discussed above, Petitioner's allegations regarding the number of black Honda dealers, American Honda's system of announcing new dealerships, and alleged evidence that American Honda discriminated against another black dealer are completely irrelevant to whether American Honda intentionally discriminated against Petitioner. *See supra*, at 8 & n.4.

7/ In fact, Petitioner's own expert witness admitted that it is a good business practice to recommend a person that is a proven, successful commodity and who would maintain an exclusive dealership. (R10-60 to 61, 69 to 74, 77 to 81).

discussed only a Honda sales and service operation, and they did not already sell any other car lines in Warner Robins. The other three applicants had other dealerships there. Only the Hughes offered this substantial benefit to American Honda. The "exclusivity" issue thus does not relate to racial discrimination.

Finally, *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970), is not at all similar to the present case and does not support Petitioner's argument that summary judgment was improperly granted here. In *Adickes*, the circumstantial evidence permitted a reasonable inference of a conspiracy because of the consistent actions of the two persons involved. In the present case, however, the evidence permits no reasonable inference of intentional racial discrimination because the conduct of which Petitioner complains affected the white Warner Robins applicants in the same way as it affected him. The circumstantial evidence proffered by Petitioner is simply insufficient to establish a genuine issue of material fact under the substantive law applicable to this section 1981 action.

CONCLUSION

This Court has articulated clear and comprehensive guidance for the proper resolution of summary judgment motions. The "reasonable jury" standard discussed in *Anderson* mirrors the standard for a directed verdict under Rule 50(a), a standard which district courts regularly apply and with which they are intimately familiar. The issue raised by Petitioner therefore is not a novel or unsettled one which requires the

attention of this Court. Moreover, the lower courts in the present case properly applied the law in granting summary judgment to Respondents. Petitioner has not presented any evidence which supports a reasonable inference that Respondents discriminated against him on the basis of his race in not awarding him the Warner Robins dealership. In fact, the undisputed evidence establishes that American Honda treated Petitioner throughout the application process just the same as it treated the other disappointed white applicants.

For these reasons, Respondents respectfully request that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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